

# Client Rights Office

Department of Health and Family Services  
Division of Disability and Elder Services

<http://dhfs.wisconsin.gov/clientrights/index.htm>

***Community Programs Training 2005***

## GRIEVANCE DECISION TERMINOLOGY

The following is a list and explanation of the terminology used to address the disposition of formal grievances in the Grievance Resolution Procedure under HFS 94.

The disposition of any grievance must fall into one of the following seven categories, indicated with boldface Roman Numerals I - VII. A listing of specific sub-classifications in *Italics* follows some of the categories. Many of these subcategories include explanations or examples of each. (The examples were initially written for State of WI inpatient facilities.)

### **I. Decision:**

#### *1. Does not rise to level of violation.*

This decision implies that the significance of the facts reviewed in the grievance are not great enough to constitute a rights violation, even if true.

[Example: A patient complains that the traffic near his residential setting makes too much noise. While the noise may be annoying at times, the traffic cannot be redirected and it is a part of urban life. The CRS doesn't need to do a full investigation on this grievance because even if the allegations of the grievance are true, they still *do not rise to the level of a violation*. But the CRS can offer suggestions for noise reduction, such as the use of earplugs or a small fan to reduce the traffic noise.]

#### *2. No rights violation found.*

This decision means that the CRS did not find that any patient right was violated.

[Example: After conducting an investigation into a grievance, the CRS concludes that the facts of the case are not significant enough to constitute a rights violation.]

#### *3. Rights violation found.*

This decision means that the patient was able to show that it is more probable than not that a patient rights violation did occur.

[Example: After conducting an investigation and reviewing the facts, the CRS finds that it is *more likely than not* that a patient rights violation occurred.]

4. *Some other right was violated.*

This decision may be used if the original complaint did not correctly raise the issue or right that was in question and the CRS finds that a different right was violated. However, this is not intended to allow a patient to bring up an issue that is unrelated to the original grievance situation. In that instance, a patient should be told that a separate grievance should be filed to address an unrelated issue.

[Example: A patient files a grievance alleging that he was not made aware of the side effects of his new psychotropic medications. While he recognized that he needs medication, the patient claims that he was not made aware of the benefits and risks of the medication he is being given. Upon investigation, the CRS finds that the facility has a practice of giving copies of the Informed Consent for Medication to patients, but failed to do so in this case. Because the consent form was signed during an episode of psychosis, and the patient was not given a copy, the patient was not aware of his right to withdraw consent, nor of the side effects of the medications. So, the CRS decides that *some other right was violated* than initially grieved.]

5. *Unable to substantiate.*

This decision means that there was some evidence to substantiate the patient's claim, but there was not enough evidence to show that it was more probable than not that a rights violation occurred.

[Example: The CRS investigates a patient/staff conflict and finds that there are conflicting stories between the parties involved. After interviewing patient and staff witnesses, the CRS finds that there are many discrepancies between the various testimonies. Because there is not significantly reliable evidence to support the patient's allegations, the CRS is *unable to substantiate* the grievance.]

## II. Dismissed:

1. *Brought in "bad faith."*

A grievance may have been brought in "bad faith" when the actual reason for filing the complaint was not related to the personal circumstance of the complainant, nor does it affect others. If the grievance is filed to harass or intimidate, or the complainant has no personal interest in the outcome, then the grievance may be dismissed for "*bad faith*."

[Examples: 1) A patient has an ongoing conflict with his social worker and decides to "get even" with that individual. The patient demands that his social worker call his parents to verify some information and the social worker does so. The patient then files a complaint over this incident requesting the social worker be fired or transferred to another unit because the social worker violated his

confidentiality rights by talking to his parents without his written informed consent. 2) A patient files a complaint stating that a taped football game was shown without permission of the National Football League. The patient demands one million dollars or he will "tell the NFL".]

## 2. *Improbable:*

A complaint is inherently *improbable* when, on its face, it is unbelievable.

[Examples: 1) A patient files a complaint alleging that a particular staff member "eats human flesh." 2) An inpatient files a complaint stating that the staff are deliberately pumping poisonous gas into the facility's ventilation system.]

## 3. *Moot:*

The concept of mootness relates to whether or not a decision needs to be made when **circumstances have changed** by the time the matter comes before the decision-maker. In general, there must be an existing controversy in order for an investigation and decision to have meaning.

To decide a case is moot implies that, whether or not a violation occurred, the patient is no longer affected by the situation or issue because whatever the relief sought has already been provided or no longer can be provided because of a change in circumstances. However, the CRS may exercise discretion to investigate a complaint that could otherwise be moot if one of the following is relevant:

1. The issue has significant importance for other patients.
2. The rationality of a rule, policy, or procedure is an important issue to address, rather than the specific individual situation from which the grievance stems.
3. The issue is of significant importance for different staff or different situations and could be addressed through the grievance procedure to prevent future conflicts or misunderstandings.

[Example: An inpatient complains about conditions on one unit, but by the time the CRS can interview him, he has been transferred to another unit. There is no relief that can be given that would benefit the patient on the new unit. The CRS may, however, choose to look into the matter anyway if significant patient rights issues that meet one of the above conditions are appropriate to the grievance.]

## 4. *Patient discharged - Moot:*

This is effectively a subcategory of "moot," with clarification as to why. The same standards as discussed in # 3 above should be used to dismiss on the grounds that the patient was discharged. A CRS does not have to dismiss a complaint just because the patient is no longer at the facility. But the CRS may do so if it appears the complaint did not raise issues relevant and important to others still at the facility.

## 5. *Not grievable:*

Patients sometimes file grievances which do not raise patient rights issues or which cannot be resolved by the grievance procedure. These include grievances regarding a patient's legal status, property lost by other institutions (such as county jails), etc. CRSs have often assisted patients with such problems, including referral to the appropriate individual or agency and/or mediation efforts on the patient's behalf. Such assistance may be given at the discretion of the individual CRS.

[Example: A patient complains that a staff person sometimes works double shifts. The patient thinks it is unfair to let any one person work extra. So, the patient writes a grievance requesting that the facility hire more staff to create jobs for more people. The CRS may dismiss this as not grievable because personnel issues are not a patient rights issue.]

#### *6. Redundant:*

A grievance is redundant when it raises the same issue the complainant has already grieved in the past and there has been no significant change in circumstances since the prior grievance was filed. The complainant must be able to assert such changes in circumstances to avoid dismissal for redundancy. Redundancy may also be found where the act or event complained of is substantially similar to that previously grieved by others, differing essentially only in the point in time or facility unit at which it occurs. In such cases, the complainant should be given a copy of the previous decision with any names blocked out to preserve confidentiality.

#### *7. Trivial:*

A complaint is trivial when, in the investigator's judgment, the relief that could potentially be gained is so small that it is outweighed by the investigator's expenditure of time and resources. In deciding whether or not a grievance is trivial, the CRS should consider:

- 1) The significance of the right affected.
- 2) The significance of any potential relief. (Note: There is a Level III Grievance Decision precedent, upheld at Level IV, holding a potential loss of \$1.06 to be an insufficient amount to justify the expenditure of resources to investigate the complaint.)
- 3) Likelihood of the issue arising again in the future (based on the incidence of similar complaints in the past as a guideline).
- 4) The present caseload and impact the investigation of the complaint may have upon the ability to timely process that caseload.

#### *8. Withdrawn:*

Patient willingly withdraws the complaint. No decision is necessary.

[Examples: (1) Patient says, "Forget that one. I found my lost coat." (2) One patient complains on behalf of another and the second patient does not want it pursued.]

### 9. *Dismissed without prejudice*

This form of dismissal can be used if the CRS believes that things changed for the patient since the grievance was filed, but those changes may not be guaranteed to continue in the future. By dismissing a grievance without prejudice, a complainant retains the ability to bring up the case at that stage (without having to go through the previous stages) if in the future the patient finds himself in the same circumstance that led to the filing of the initial grievance.

[Example: An inpatient complains during the winter months that the warm air vent in his room works sometimes, but blows cold air on him at other times. At Level I, the CRS investigates, and finds that warm air comes out of the vent. Maintenance is asked to look into it, and cannot find any problem. The CRS is unable to substantiate the problem. A few weeks later, the patient complains that the vent is blowing cold air again during the night and appeals the decision to Level III. Maintenance looks more closely into the problem, and fixes a gap in the ductwork. Even though it seems to be resolved, the CRS dismisses it without prejudice so the case could be re-opened at Level III if the problem occurs again.]

### **III. Referred to:**

Matter is referred to other sources. Options include referral to:

#### 1. *Law enforcement.*

[Example: Referred alleged sexual assault to police.]

#### 2. *Legal services.*

[Example: Referred legal concern to a public defender or private attorney.]

#### 3. *Other facility staff.*

[Example: Referred records request to the Treatment Team or social worker for consideration.]

#### 4. *Outside agency.*

[Example: Referred to prior facility where property was lost.]

### **IV. Resolved:**

#### 1. *Compromise reached:*

This decision can be issued if the patient has accepted the relief offered, even though it was not the relief the patient originally asked for. However, this decision requires that the patient agrees to accept the outcome even if it is not the ideal relief that the patient requested.

[Example: The CRS offers the patient \$10 for his broken watch and he accepts the compromise even though he initially requested that the facility pay for the full repairs on the broken watch.]

2. *Law/rule interpretation clarified:*

[Example: The CRS may consider a grievance resolved if the issue is based on a misinterpretation of a facility law or rule and the actual meaning is clarified to the complainant.]

3. *Other change made:*

Some other change in the situation surrounding the grievance was made that eliminated the conditions of the initial grievance and resolved the situation.

[Example: A patient filed a grievance alleging that staff play favorites by playing cards with some patients, but refuse to play cards with him. The patient requests that the staff play cards with him too. After considering this issue, the Unit Manager informs her staff not to play cards with any patients. The CRS could then find this grievance *resolved, other change made*.

4. *Relief Granted:*

Relief was granted as requested, or a fair, just, and appropriate relief was granted instead.

[Example: 1) A patient wants \$20 for a broken watch and the CRS finds that he is entitled to the full amount. 2) A patient complains about a lost coat, and the CRS finds it for her. If the remedy was granted, use this “relief granted” to document it, rather than considering it withdrawn.]

**V. Stage Skipped:**

A stage can be skipped if it would not be appropriate to review the grievance at that level of the process.

[Example: A patient complains the CRS. There is no alternate CRS who can investigate it. It can forwarded to the county level for review.]

**VI. Upheld:**

This determination can be rendered at Level II, III, or IV if the decision-maker finds that the decision at the previous level(s) took into account all relevant information and made an objective and complete decision.

**VII. Upheld but clarified:**

This allows the decision-maker at Level II, III, or IV to favorably uphold the previous decision, but also contribute some supplementary aspect, such as:

1. *Some changes:*

This is a favorable way to modify the previous determination. While this upholds the previous decision, it can be used to improve upon or supplement the relief granted. This is usually done when the previous decision is fundamentally sound, but there is some aspect of the initial determination that could be improved upon.

[Example: The Level I investigation determines the grievance to be resolved: compromise reached, because the patient is given \$10 to replace his watch that the staff lost, but the patient appeals because the custom watch band that was also lost will cost an additional \$2. If this information was overlooked by the Level I report, then the Director may *uphold the decision with some changes* by granting the patient the additional money for the watchband.]

2. *Commentary.*

This is another way to uphold the previous decision, but also allows for discussion of the case, follow through, or comments on the decision.

[Example: The patient from the above example appeals because he believes the staff person should be reprimanded for losing his watch. The Level III investigator upholds the previous decisions from Level I or II, but decides to add commentary. The commentary states that “mistakes sometimes happen,” and notes that the staff person has apologized for the patient’s inconvenience of having to replace his lost watch with the money.]

3. *Add more information.*

This determination also upholds the previous decision, but contributes some information to the client without making any changes to the grievance decision.

[Example: The appeal from Level III to Level IV in the above examples alleges that another staff person is making fun of the patient for the watch being lost and telling the other patients about how the patient over-reacted to the whole situation. The Administrator *upholds the previous decisions and adds more information*, to the effect that if confidential information is being divulged, then the patient should file a separate grievance on that issue.]